

DATE: April 26, 2006

In Re:

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SSN: -----

Applicant for Security Clearance

CR Case No. 05-00609

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has surrendered her Taiwanese passport and renounced her Taiwanese citizenship. However, her close and continuing relationship with a foreign financial interest, namely her parents, poses a security risk. Clearance is denied.

**STATEMENT OF THE CASE**

On September 27, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 18, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 25, 2005. A notice of hearing was issued on February 7, 2006, scheduling the hearing for February 24, 2006. At the hearing the Government presented eleven exhibits. The Applicant presented seven exhibits and she testified on his own behalf. The record was left open until March 10, 2006, to allow the Applicant to submit additional supporting documentation. The Applicant submitted one Post-Hearing Exhibit consisting of six pages. The official transcript (Tr.) was received on March 7, 2005.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 24 years of age and holds a Bachelors Degree in Electrical Engineering. She is employed as a Multi-Discipline Engineer II for a defense contractor. She seeks a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Taiwan. She moved to the United States in 1997 at the age of sixteen and was sponsored by her uncle and cousins who had moved here earlier. She attended high school and then went on to college, where she obtained her Bachelors Degree in Electrical Engineering. She became a United States citizen in June 2002, and was issued a United States passport in July 2002.

The Applicant's father and mother are citizens and reside in Taiwan. Her father is a physician. Her mother is a housewife. They own a home in Taiwan worth approximately \$600,000.00 in United States dollars. (Tr. p. 42). They also have a checking account in Taiwan with about \$500,000.00 in it. (Tr. p. 42). The Applicant's father and mother travel back and forth between the United States and Taiwan about three or four times a year. The Applicant contacts them by telephone about once a week and by e-mail about once a week. Her father and mother plan to move to the United States when they retire.

The Applicant lives with her two brothers and sister in a home that was purchased and is owned by her father and mother. Her parents pay for all of her living expenses and other miscellaneous bills so that she is able to save her earnings and invest them. She has \$50,000.00 in her savings account, \$50,000.00 in stocks, and \$30,000.00 in her 401K in the United States.

The Applicant's maternal and paternal grandmothers are citizens of and reside in Taiwan. She contacts them only during her visits to Taiwan. The Applicant also has a friend in Taiwan who recently quit her job to go back to school to get her MBA. She contacts her by e-mail about once a week.

The Applicant has traveled to Taiwan on seven separate occasions in 1998, 2000, 2001 (twice), 2002 and 2003. She tries to visit Taiwan about once a year to see her family there and stays about three weeks on each given visit. She usually travels with her brothers and sister and stays at her parents home in Taiwan. She also visits her grandmothers during this vacation.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has acted in such a way as to show a preference for another country over the United States.

The Applicant renewed her Taiwanese passport on December 27, 2000, that was not to expire until December 27, 2010. Since becoming a United States citizen she has used her Taiwanese passport on only one occasion when traveling to Taiwan in 2002 because she was uncertain which passport to use. She now uses only her United States passport to travel abroad.

In a letter dated October 7, 2005, to the Taipei Economic And Cultural Office, the Applicant indicated that she surrendered her Taiwanese passport. (*See Applicant's Exhibit 7*). She testified that she is also willing to renounce her Taiwanese citizenship and requested that the record remain open for additional documentation to support this effort.

A letter dated March 8, 2006, stated that the Applicant mailed her letter requesting to renounce her Taiwanese citizenship to the Taipei Economic And Cultural Office on March 1, 2006.

(*See Applicant's Post-Hearing Exhibit*).

Applicant's Performance and Development Summary for 2005, indicates that she is an effective team member with excellent technical skills. She is a quick learner, great team player and needs minimal supervision. She was submitted for a team achievement award based upon her outstanding performance. (*See Applicant's Exhibit A*).

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the

1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

#### Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

#### Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

#### Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

#### Foreign Influence

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

#### Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
2. Sharing living quarters with a person or person, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;
8. A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

#### Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- I. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on her suitability for access to classified information.

The Applicant was a dual citizen of the Taiwan and the United States who possessed a Taiwanese passport. Disqualifying Conditions, (1) *The exercise of dual citizenship* and (2) *Possession and/or use of a foreign passport* apply. However, Mitigating Conditions (1) *Dual citizenship is based solely on parent's citizenship or birth in a foreign country* and (4) *Individual has expressed a willingness to renounce dual citizenship* are applicable.

Since learning that possession of a foreign passport is not permitted when holding a security clearance, in compliance

with the provisions of the Money Memorandum, she surrendered her foreign passport to the Taiwan Economic And Cultural Office. She has also renounced her Taiwanese citizenship. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the directive and the Money Memorandum. Accordingly, she has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the evidence establishes that she is vulnerable to foreign influence. The Applicant's father, mother, grandmothers on both sides, and a friend are all citizens and residents of Taiwan. The Applicant has close, regular, frequent and continuing contact with her parents. The Applicant resides in a home owned by her parents in the United States and is completely dependent on them for her financial support. In fact, her parents in Taiwan, pay all of her bills and living expenses in the United States. Disqualifying Conditions *(1) an immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country, (2) Sharing living quarters with a person or person, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists and (8) A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.* The Applicant retains close ties with Taiwan. Based on the foregoing, under the current policy, the Applicant raises a security concern and Guideline B is found against the Applicant.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has not met his ultimate burden of persuasion under B. Guideline C is found for the Applicant.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant 1.c.: For the Applicant

Subparas. 1.d.: For the Applicant

1.e.: For the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge